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FILED
U.S. DISTRICT COURT

2005 JUL -5 P 3: 33

DISTRICT OF UTAH
BY:  DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

<p>AQUILA, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>C.W. MINING, d/b/a CoOp Mining Company,</p> <p>Defendant.</p>	<p>COMPLAINT</p> <p>Judge Tena Campbell DECK TYPE: Civil DATE STAMP: 07/05/2005 @ 15:31:47 CASE NUMBER: 2:05CV00555 TC</p>
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Aquila, Inc. ("Aquila"), by and through its undersigned attorneys, files this Complaint against C.W. Mining, d/b/a CoOp Mining Company ("C.W. Mining") and alleges as follows:

PARTIES

1. Aquila is a Delaware corporation having its principal place of business in Missouri.
2. C.W. Mining is a Utah corporation having its principal place of business in Utah.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Aquila and C.W. Mining are incorporated in and have principal places of business in different states. Further, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. The Court has personal jurisdiction over C.W. Mining.
5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a).

BACKGROUND FACTS

6. On or about September 10, 2003, Aquila and C.W. Mining entered into an agreement for the purchase by Aquila of coal produced by C.W. Mining (the “Agreement”).

7. The Agreement has an initial term of three years, running from January 1, 2004, through December 31, 2006 (the “Primary Term”). The Agreement grants Aquila an option to extend the term of the Agreement for an additional two years, from January 1, 2007, through December 31, 2008 (the “Extension Term”). The option to extend the term has been exercised by Aquila.

8. Under the Agreement, C.W. Mining is to supply Aquila with certain stated quantities of coal with certain stated characteristics.

9. The price to be paid by Aquila for these amounts of coal is set forth in the Agreement.

10. C.W. Mining has breached the terms of the Agreement by failing and refusing to supply coal in the quantity and of the quality required by the Agreement.

11. By letter dated April 18, 2005, C.W. Mining informed Aquila that it was purportedly terminating the Agreement.

12. By letter dated April 25, 2005, Aquila demanded that C.W. Mining resume delivery of coal in the quantities provided in the Agreement and that C.W. Mining withdraw its purported notice of termination.

13. Despite Aquila's demand, C.W. Mining has failed and continues to fail to comply with the terms of the Agreement. Aquila hereby cancels the Agreement.

14. Since executing the Agreement in September 2003, the market price of coal has increased significantly over the price negotiated and incorporated into the Agreement.

CAUSE OF ACTION--BREACH OF CONTRACT

15. Aquila incorporates paragraphs 1 through 14 as if fully set forth herein.

16. Aquila and C.W. Mining entered into the Agreement under which C.W. Mining promised to supply certain quantities of coal to Aquila in exchange for payment by Aquila of an agreed price.

17. C.W. Mining has breached the terms of the Agreement by, among other things, failing and refusing to supply coal in compliance with the Agreement and by improperly repudiating the Agreement on April 18, 2005.

18. Aquila has duly and properly performed all of its obligations under the Agreement.

19. C.W. Mining's improper actions have caused and will cause Aquila damages, including but not limited to: (1) the difference between the negotiated price of coal in the Agreement and the cost of cover goods purchased by Aquila over the duration of the contract

(including the Extension Term) and all incidental or consequential damages incurred by Aquila related thereto, (2) damages for C.W. Mining's non-delivery of coal under the Agreement, and (3) other damages, all in an amount estimated to be in excess of \$75,000.

WHEREFORE, Aquila prays for judgment in its favor and against C.W. Mining on its complaint for all damages suffered and incurred by Aquila and for its attorneys' fees and costs incurred in this action, and for such other and further relief as the Court deems just and proper.

DATED this 5th day of July, 2005.

RAY QUINNEY & NEBEKER P.C.

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829324

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Aquila, Inc.

(b) County of Residence of First Listed Plaintiff Jackson County, MO
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
See attachment.**DEFENDANTS**

C.W. Mining d/b/a CoOp Mining Company

County of Residence of First Listed Defendant Salt Lake County, UT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, INDICATE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY: DEPUTY CLERK**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:

Breach of contract/recovery of damages**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Excess of \$75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGEDOCKET NUMBER

DATE

July 5, 2005

SIGNATURE OF ATTORNEY OF RECORD

Allen T. Brinkhoff

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____

Judge Tena Campbell

DECK TYPE: Civil

DATE STAMP: 07/05/2005 @ 15:31:47

CASE NUMBER: 2:05CV00555 TC

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